

## REMARKS

### **A. Rejection of Claims 1, 4 and 6 Over Watson**

The Examiner has rejected claims 1 and 4-6 under 35 U.S.C. § 103(a) as being unpatentable over Watson (U.S. 4,294,548). Applicant respectfully traverses this rejection.

Claims 1 and 4-6 of the present Application include the element, “a mounting plate abutting the motor and surrounding the motor output shaft.” In the Office Action, the Examiner asserted that Watson depicts such a mounting plate in Fig. 2, between the motor (1) and the pulley (16). Applicant respectfully disagrees -- contrary to the Examiner’s assertions, Watson does not disclose, teach or suggest this element of claims 1 and 4-6.

The structure shown in Fig. 2 of Watson to which the Examiner refers is one side of a transmission casing. Although, Watson does not describe the structure, the structure presumably acts to protect the pulleys from dirt, oil, spilled cement, and other contaminants that may negatively affect performance. In any event, there is no disclosure in Watson that suggests that the structure to which the Examiner refers is a “mounting plate.” Instead, the motor in Watson is clearly “mounted” on the brackets (5) connected to the framework (2) (See Col. 1, Line 63, and Col. 2, Lines 2-8). Thus, the rejection of claims 1 and 4-6 under 35 U.S.C. § 103(a) is inappropriate in view of the deficiency of the primary reference.

Further, there is nothing in the art to suggest curing this deficiency by modifying Watson to include this element. The law is clear that the cited reference must suggest the invention described by the claim, or the Examiner must present a convincing line of reasoning as to why one skilled in the art would have found the claimed invention obvious in light of the teachings of the cited reference in order to support a conclusion that a claim is directed to obvious subject matter. *See Ex Parte Clapp*, 227 U.S.P.Q. 972 (PTO Bd. App. 1985) (emphasis added). “[T]he mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” *In re Laskowski et al.*, 871 F.2d 115, 10 U.S.P.Q.2d 1397, 1398, (Fed. Cir. 1989), *citing*, *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125, 1127 (Fed. Cir.

1984). Unless the reference suggests the particular combination, it cannot show the actual invention was obvious. *In re Mahurkar Patent Litigation*, 831 F. Supp. 1354, 1374-1375, 28 U.S.P.Q.2d 1801, 1817 (N.D. Ill. 1993).

There is no motivation whatsoever to modify Watson to include a mounting plate abutting the motor and surrounding the motor output shaft. Indeed, Watson teaches away from such a modification. As discussed above, Watson describes that the motor (1) is “pivotally mounted on brackets (5) on the framework on one side of the motor.” (*see* Watson at col. 2, lines 2-8). Watson further teaches the use of this pivotal mounting to provide the required tension on the driving belts, which transfer power from the motor to the drive shaft (3) to provide tension required for the driving belts. (*see* Watson at col. 2, lines 2-8). Accordingly, the use of a “mounting plate” in connection with the concrete mixer of Watson would make difficult, and possibly even prohibit, one’s ability to adjust the tension of the belts. Consequently, the use of such a mounting plate is contrary to the teachings of Watson. Thus, one of ordinary skill would have no motivation to modify Watson to include a mounting plate as claimed in the present application.

In view of the above, Applicant respectfully submits that the § 103 rejection of Claims 1 and 4-6 over Watson has been obviated. Therefore, Applicant respectfully requests reconsideration and removal of the same.

**B. Rejection of Claims 2 and 3 Over Watson in View of Halsted**

The Examiner has rejected claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Watson (U.S. 4,294,548) in view of Halsted (5,492,401). Applicant respectfully traverses this rejection.

Applicant submits that the neither Watson nor Halsted, alone or combined, would yield the mounting plate recited in claims 2 or 3 of the present Application as neither Watson nor Halsted, alone or combined, discloses Applicants’ claimed invention. Claims 2 and 3 of the present Application include the limitations of amended claim 1. Accordingly, claims 2 and 3 each include the element: “a mounting plate abutting the motor and surrounding the motor output shaft.” As discussed above, Watson does not disclose, teach or suggest this element. Thus, the rejection of

claims 2 and 3 under 35 U.S.C. §103(a) is inappropriate in view of the deficiency of the primary reference.

Even if one combined Watson and Halsted, one would not derive Applicants' claimed device. Specifically, Halsted discloses a power driven concrete mixer with a plastic drum and a metal pan to extend the life of the drum. The power unit (16) in Halsted appears to be mounted directly to the converging standards (26), and not to a mounting plate. (See Halsted, Fig. 1). The bearing assemblies (146) surround the shaft (144) in Halsted (See Halsted, Fig. 4), rather than a mounting plate, and no structure resembling a mounting plate is present in any of the drawings. Like Watson, Halsted neither discloses, teaches nor suggests a "a mounting plate abutting the motor and surrounding the motor output shaft." Because neither Watson nor Halsted includes this elements, the combination of these references also would not disclose Applicants' claimed device. Thus, the combination of Watson and Halsted cannot be said to render claims 2 and 3 obvious.

In view of the above, Applicants respectfully submit that the § 103 rejection of claims 2 and 3 over Watson in view of Halsted has been obviated. Thus, Applicants respectfully request reconsideration and removal of the same.

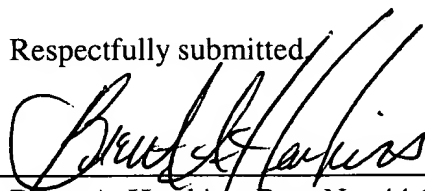
**C. Rejection of Claims 3 and 5 Under 35 U.S.C. § 112**

As stated above, claims 3 and 5 have been canceled without prejudice to reinstate by this Response. Thus, the § 112 rejection of claims 3 and 5 is moot.

## CONCLUSION

In view of the above Remarks, Applicant respectfully submits that claims 1, 2, 4, and 6 are clearly patentable over the cited prior art, and are in condition for allowance. Applicant respectfully requests that the Examiner withdraw the rejections of claims 1, 2, 4, and 6 and enter an allowance of the same. Applicant further invites the Examiner to contact the undersigned attorney to discuss any matters pertaining to the present Application.

Dated: 4/25/03


Respectfully submitted  
  
By: \_\_\_\_\_  
Brent A. Hawkins, Reg. No. 44,146  
Customer No. 26967  
Wallenstein & Wagner, Ltd.  
311 South Wacker Drive, 53rd Floor  
Chicago, Illinois 60606-6622  
312.554.3300

### CERTIFICATE OF EXPRESS MAILING UNDER 37 C.F.R. § 1.10

Express Mail Label No: EV 203175655 US

Date of Deposit: **April 25, 2003**

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee", postage prepaid, service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: Commissioner of Patents, Washington, D.C. 20231.

  
Gillian Gardner (173250.1)